

APPEAL NO. 020267  
FILED MARCH 6, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was opened on November 26, 2001, and closed on December 19, 2001. With respect to the issues, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on \_\_\_\_\_; that because the claimant did not sustain a compensable injury, he had no disability; and that the claimant is not barred from pursuing workers' compensation benefits because he did not make an election of remedies.

The claimant appealed the hearing officer's determinations regarding injury and disability. The respondent (carrier) filed a response, urging affirmance. The determination that the claimant did not make an election of remedies has not been appealed and has become final. Section 410.169.

DECISION

Affirmed.

The claimant testified that during the morning of \_\_\_\_\_, he was injured while attempting to move a 300-pound sign with a coworker; that despite the onset of immediate pain he continued working that day and the next day, when he told his coworker that he had been injured lifting the sign; that the following week he went to a chiropractor; and that he reported his injury to his supervisor when he knew the seriousness of the injury on \_\_\_\_\_. The carrier offered evidence that coworkers did not recall the claimant alleging a work injury after he attempted to lift the sign on \_\_\_\_\_, or the next week; and that the claimant had told his supervisor that he was injured at home.

The hearing officer made findings of fact and concluded that the claimant did not sustain a compensable injury on \_\_\_\_\_. The claimant had the burden to prove that he was injured in the course and scope of his employment. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). As the trier of fact, the hearing officer may believe all, part, or none of the testimony of any witness. Texas Workers' Compensation Commission Appeal No. 950084, decided February 28, 1995. The finder of fact may believe that the claimant has an injury, but disbelieve the claimant's testimony that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). A fact finder is not bound by the testimony (or evidence) of a medical witness where the credibility of that testimony (or evidence) is manifestly dependent upon the credibility of the information imparted to the medical witness by the claimant. Rowland v. Standard Fire Insurance Company, 489 S.W.2d 151 (Tex. Civ. App.-Houston [14th Dist.] 1972, writ ref'd n.r.e.). An appellate-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would

support a different result. Appeal No. 950084, *supra*. When reviewing a hearing officer's decision to determine the factual sufficiency of the evidence, we should set aside the decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Appeal No. 950084. We conclude that the hearing officer's findings, conclusions, and decision are supported by sufficient evidence and that they are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm her determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **EAGLE PACIFIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge